

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

ETTA FANNING,

Plaintiff,

VS.

CITY OF SHAVANO PARK, TEXAS,

Defendant.

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Civil Action No. 5:18-cv-0803-XR

**PLAINTIFF'S UNOPPOSED MOTION FOR LEAVE  
TO ACCEPT CERTAIN EXHIBITS SUBMITTED  
AFTER THE DEADLINE OF NOVEMBER 4, 2019**

Plaintiff respectfully requests that the Court accept certain exhibits to her Motion for Summary Judgment [Doc. 31] (filed 11/04/19). After conferring with the Court, the exhibits are attached to this motion, which is submitted the day after the deadline for the Motion for Summary Judgment. Counsel for Defendant City of Shavano Park is unopposed to this request.

Plaintiff's counsel attempted to file the exhibits with the Motion for Summary Judgment shortly before midnight on November 4, 2019, but encountered errors when attempting to upload the exhibits in the CM/ECF filing system. The CM/ECF system did not give a reason for the failure to submit the documents. After receiving the error message, Counsel attempted to cure any issues by clearing cookies from his browser's cache and, when that failed, attempted to log out and use a different browser. Counsel had not anticipated this, since the largest exhibits were merely PDF files of deposition transcripts and transcript excerpts.

With the deadline approaching at midnight, Counsel decided to file the motion without the exhibits and request leave from the Court to file the exhibits the following day (November 5, 2019).

In retrospect, Counsel continued working too close to the deadline as he was attempting to include all the necessary factual material drawn from discovery in this case. He did not anticipate the error in attaching the accompanying exhibits, potentially a result of containing too large of file sizes. This was an honest and inadvertent mistake/oversight on counsel's part. Plaintiff respectfully requests that the Court accept the filings.

**Omitted Exhibits.** Plaintiff moves that the Court grant leave to file the material attached to this motion for leave, which includes an Index of Exhibits, adding the following material:

Exhibit 1 – Etta Fanning Deposition Excerpts

Exhibit 2 – Voicemail Transcription of HOA President Adam Holzhauer to Bill Hill Regarding Banner Signs (Audio file submitted by flash-drive)

Exhibit 3 – City Ordinance Violation Reports from M. Kerr and R. Lacy

Exhibit 4 – July 27, 2018, text conversation between Etta Fanning and Bill Hill

Exhibit 5 – Bill Hill Deposition Excerpts

Exhibit 6 – July 27, 2018, email from Daniel Santee to Jerad Najvar

Exhibit 7 – Defendant Shavano Park's Answers to Plaintiff's First Set of Interrogatories

Exhibit 8 – The Sign Code, Ord. No. O-2016-010

Exhibit 9 – City Policy No. 11

### **CONCLUSION**

Plaintiff respectfully requests that this Court grant leave and accept the above-referenced materials as exhibits to her Motion for Summary Judgment.

Respectfully submitted,

/s/ Jerad Najvar  
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**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that on November 5, 2019, the foregoing document, and any accompanying exhibits and proposed order, was served by CM/ECF as follows:

Charles S. Frigerio  
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San Antonio, Texas 78205

/s/ Jerad Najvar  
Jerad Najvar